



To enrich lives through effective and caring service



February 10, 2004

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**JOINT RECOMMENDATION OF THE CHIEF ADMINISTRATIVE OFFICER AND
DIRECTOR OF THE DEPARTMENT OF BEACHES AND HARBORS TO APPROVE
AMENDMENT TO LIMITED FORBEARANCE AGREEMENT – PARCEL 125R
(MARINA CITY CLUB) – MARINA DEL REY
(4th DISTRICT)
(3 VOTES)**

IT IS JOINTLY RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed Amendment to Limited Forbearance Agreement for Parcel 125R is categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chairman of the Board to sign three copies of the Amendment to Limited Forbearance Agreement (Forbearance Amendment) for Parcel 125R, extending the time by which Essex Marina City Club, L.P., a California limited partnership (Lessee), shall have satisfied enumerated conditions precedent to and shall have executed a proposed amendment to the Second Amended and Restated Lease between the County and Lessee for Parcel 125R in Marina del Rey.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On December 16, 2003, your Board authorized and approved a Limited Forbearance Agreement (Agreement) to provide a delay period during which negotiations toward a proposed lease amendment (Lease Amendment) could continue that would address infrastructure and capital improvement concerns relating to leasehold improvements on Parcel 125R in Marina del Rey. The Agreement, among other matters, requires that the

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Lessee shall have executed the Lease Amendment to the Second Amended And Restated Lease between the County and Lessee (Lease) on or before February 15, 2004.

Due to the complex structure of the Lease and condominium subleases, further modifications of a number of subsidiary documents and other conditions are required in order to give effect to the proposed Lease Amendment and provide adequate protection of the County's position, including provisions relating to collection of and security for payment of maintenance obligations by those condominium owners who elect not to participate under the terms of the proposed Lease Amendment. Both the new Lessee and the condominium owners have requested additional time for review, and analysis of the complex documentation related to the proposed Lease Amendment prior to its execution. We are, therefore, requesting approval of the attached Forbearance Amendment (Exhibit A), which will extend the time from February 15, 2004 to March 15, 2004 by which the Lessee must: 1) execute the proposed Lease Amendment; 2) deliver a letter of counsel or legal opinion, in form and substance satisfactory to the County, providing assurance that Lessee may collect monthly and/or supplemental maintenance fees from condominium owners who do not elect to participate under the terms of the proposed Lease Amendment, and that such payment obligations are secured by the existing subleasehold deed of trust against each applicable condominium unit, and; 3) consent to any County required modifications in the form of Lessee's subleasehold deeds of trust that may be necessary to give full effect to the proposed amendments to each condominium sublease for those condominium owners who do elect to participate under the terms of the proposed Lease Amendment. The other conditions of the Agreement are not changed and will remain in effect and any proposed Lease Amendment, if all conditions of the Agreement are met, will still require approval by your Board.

Implementation of Strategic Plan Goals

This recommendation is consistent with the County's Strategic Plan Goal of Service Excellence, in that it preserves the County's strategic partnership with an existing Lessee.

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FISCAL IMPACT/FINANCING

The fiscal impact of the Agreement and Forbearance Amendment are limited to the delay in collection of certain portions of County rent for the leasehold, all of which is to be repaid, with interest, such that this action will be revenue neutral to the County.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Forbearance Amendment will allow additional time, from February 15, 2004 to March 15, 2004, for the satisfaction of the specified Agreement conditions that Lessee execute the proposed Lease Amendment, deliver a letter of counsel and consent to any County required modifications of subleasehold deeds. No other terms or conditions of the Agreement are modified.

Nothing in the Agreement or Forbearance Amendment shall obligate, or constitute a commitment by, County to enter into the Lease Amendment. Moreover, County's approval and authorization of the Agreement, as amended by the Forbearance Amendment, does not constitute a waiver of any other terms or provisions of the Lease, which has not been amended and remains in full force and effect, subject to the Agreement, as amended.

County Counsel has approved the Forbearance Amendment as to form.

ENVIRONMENTAL DOCUMENTATION

The proposed Forbearance Amendment is categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines. This proposed action and the Forbearance Amendment, in and of themselves, do not authorize any construction or other activity.

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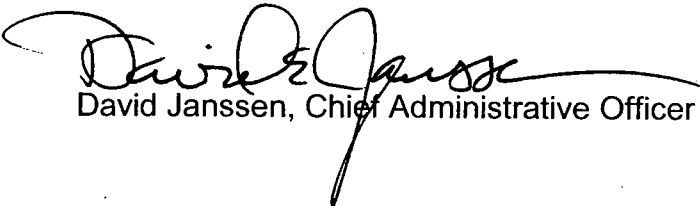
IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on current County services as a result of the Forbearance Amendment.

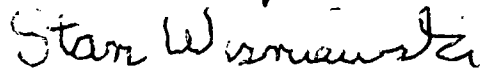
CONCLUSION

Please authorize the Chairman to execute three copies of the Forbearance Amendment and direct the Executive Officer to return two executed copies of the Amendment to the Department of Beaches and Harbors.

Respectfully submitted,



David Janssen, Chief Administrative Officer



Stan Wisniewski, Director
Department of Beaches and Harbors

Attachment (1)

c: Executive Officer
County Counsel

FIRST AMENDMENT TO LIMITED FORBEARANCE AGREEMENT
(Re: Second Amended and Restated Lease [Improved Parcel] No. 55624,
Parcel No. 125R – Marina del Rey Small Craft Harbor)

THIS FIRST AMENDMENT TO LIMITED FORBEARANCE AGREEMENT (this "Amendment") is made as of February 5, 2004 by and between **COUNTY OF LOS ANGELES ("County")** and **ESSEX MARINA CITY CLUB, L.P.**, a California limited partnership ("**Lessee**"), with reference to the following facts:

RECITALS

A. County and Marina City Club, L.P., a California limited partnership (f/k/a J.H. Snyder Company) ("**Original Lessee**"), entered into that certain Limited Forbearance Agreement dated as of December 16, 2003 (the "**Forbearance Agreement**"), pursuant to which County agreed to temporarily delay a rent increase under the Lease (as defined in the Forbearance Agreement and under which, as of the date of the Forbearance Agreement, County was the lessor and Original Lessee was the lessee) that was otherwise scheduled to be effective as of January 1, 2004, as more particularly provided and upon and subject to the terms and conditions contained in the Forbearance Agreement.

B. Pursuant to that certain Assignment of Lease, dated as of December 11, 2003, and that certain Acceptance of Assignment of Lease, dated as of December 18, 2003, Lessee acquired all of Original Lessee's right, title and interest in and to, and assumed Original Lessee's obligations under, the Lease, effective as of January 21, 2004. County executed that certain Consent to Assignment of Lease, dated January 6, 2004, whereby it consented to such assignment of the Lease, subject to the satisfaction of certain conditions specified therein.

C. County and Lessee desire to amend the Forbearance Agreement as provided in this Amendment.

NOW, THEREFORE, with reference to the foregoing Recitals, County and Lessee hereby agree as follows:

1. Definitions. All initially-capitalized terms used but not defined in this Amendment have the meanings given such terms in the Forbearance Agreement.
2. Representations and Warranties. To induce County to enter into this Amendment, Lessee hereby represents and warrants to County as follows:
 - 2.1 As of the date hereof, Lessee has not further assigned its interest as Lessee under the Lease; and
 - 2.2 Lessee has not encumbered its interest in the Lease with any deed of trust, mortgage or similar security instrument, nor has Lessee expressly assumed any loan secured by a deed of trust, mortgage or similar security instrument encumbering the Lease.

3. Amendment. Exhibit A to the Forbearance Agreement is hereby deleted and replaced with Exhibit A to this Amendment.

4. No Other Amendments. The Forbearance Agreement has not been amended other than by this Amendment and, as amended by this Amendment, the Forbearance Agreement is in full force and effect. In the event of any conflict between this Amendment and the Forbearance Agreement, the terms of this Amendment shall prevail.

5. Effect of Limited Forbearance. Nothing in the Forbearance Agreement or this Amendment shall obligate, or constitute a commitment by, County or Lessee to enter into the Lease Amendment.

6. Integration. This Amendment is the entire agreement between County and Lessee with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between them with respect to the matters contained in this Amendment; provided, however, that nothing in this paragraph shall limit the first sentence of Paragraph 4 of this Amendment.

7. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

8. Exhibit. Exhibit A attached to this Amendment is hereby incorporated into and is a part of this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

COUNTY:

COUNTY OF LOS ANGELES

By: _____

Chairman, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS
Executive Officer-Clerk of the
Board of Supervisors

By: _____

Deputy

APPROVED AS TO FORM
BY COUNTY COUNSEL:

LLOYD W. BELLMAN

By: _____

Deputy

LESSEE:

ESSEX MARINA CITY CLUB, L.P.,
a California limited partnership

By: Essex MCC, LLC
a Delaware limited liability company,
its general partner

By: Essex Portfolio, L.P.,
a California limited partnership,
its sole member

By: Essex Property Trust, Inc.
a Maryland corporation,
its general partner


By: 
Name: GERALD E. KELLY
Its: VICE PRESIDENT

EXHIBIT A

Amendment Conditions

A. Conditions to be Satisfied Not Later Than March 15, 2004

1. The Lease Amendment shall have been executed by Lessee and delivered to County.
2. The execution of the Lease Amendment shall have been approved by each then-existing Approved Encumbrance Holder.

B. Conditions to Be Satisfied by the Outside Effective Date Deadline

3. The execution of the Lease Amendment and each of the other documents described therein or otherwise contemplated hereby shall have been approved by County's Board of Supervisors.
4. The execution of the Lease Amendment shall have been approved by each Approved Encumbrance Holder (other than those described in item 2 above).
5. The number of Category A Units must be at least four hundred eighty (480).
6. An Amendment to Condominium Sublease in the form approved by County (each a "**Condominium Sublease Amendment**") shall have been duly executed and delivered with respect to each of the Category A Units (i.e., by the Prepaid Sublessee of such unit and its Authorized Mortgagees (as defined in the Master Condominium Sublease). Without limiting the County's right to approve the form of the Condominium Sublease Amendment, County may require that it also include provisions requiring the amendment of the related Subleasehold Deed of Trust under which the Prepaid Sublessee is the trustor and the Lessee is the beneficiary.
7. Counsel to the Owners Association or Lessee shall have delivered to County and Lessee a letter from counsel, in form and substance satisfactory to each of County and Lessee, which explains the mechanism under the Master Condominium Sublease that enables Lessee to collect monthly maintenance fees and/or supplemental maintenance fees from those (and only those) Prepaid Subleases which are Category B Units, and provides that such payment obligation is secured by the Subleasehold Deed of Trust against the applicable Prepaid Sublessee's condominium unit. If County is not satisfied with such letter, then Lessee may elect to cause this condition to be satisfied by delivering to County a legal opinion from counsel to the Owners Association or Lessee in form and substance satisfactory to County.
8. Lessee shall have consented in writing to a permanent and exclusive easement reserved by County, pursuant to a Declaration of Easement in form and substance satisfactory to County and Lessee, to permit County to widen the waterfront promenade.
9. Lessee shall have agreed, pursuant to a written instrument in form and substance satisfactory to County, to repair or replace certain boat slips adjacent to the Improved Parcel in a

manner and in accordance with a schedule acceptable to County and Lessee.

10. If the Lease Amendment becomes effective after June 30, 2004, then, for each Change in Ownership of a Prepaid Sublessee's interest as to a Category A Unit that occurs after such date, Lessee shall have paid County the sum of (i) 1.5% of the sales price or other consideration given for such Change in Ownership (in addition to the 1% Administrative Transfer Fee collected by Lessee for County's benefit at the time of such Change in Ownership), plus (ii) interest on the amount described in clause (i) from and after the date of such Change in Ownership until the date of payment at the rate equal to the investment yield earned on the County's Treasury Pool during such period, as contained in County's Report of Investments covering such period. Such payments, if any, will be credited to Lessee for the purpose of any rent adjustment analysis performed in 2019 pursuant to the Lease Amendment and for the purpose of reducing any disbursed repair funds balance pursuant to the Lease Amendment.